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10/593,227	09/18/2006	Elizabeth Harumi Kobara Pestell	HF/15-23033/A/PCT	7040
324 7590 04/12/2010 BASF Performance Products LLC Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			EXAMINER NGUYEN, THUY-AI N	
			ART UNIT 1796	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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DETAILED ACTION

Response to Arguments

Applicant's arguments regarding claims 1, 2, 4- 10 and 13- 15 have been fully considered but they are not persuasive for the reasons below.

First, applicant argues that it would not be obvious to one to select 2-(4-thiazolyl)benzimidazole and Triclosan from a list of many antimicrobial agents. This is not persuasive because it would be obvious for one person to select a known compound or substitute one for a known compound from a list of antimicrobial agents to obtain predictable result.

Second, the applicant argues that one would not know to use the mixture of the said two compounds above to have high activity for combating bacteria as compared to individual. This argument is moot because there may be more than one antimicrobial agent as said in the mixture of antimicrobial agents (Ghosh, [0101 and 0102]).

Respecting to the Declaration 132, the declaration is not commensurate with the scope of the claim. The composition in the claim comprises a mixture of component (a) and one out of two components (k) while the test only shows the mixture of (a) and Tinosan HP 100. In addition, the claim does not specify proportion of (k) component, while the test has 0.3 percent of Tinosan HP 100. In the claim, component (a) Tinosan Plus FG is in a range of from 0.01 to 90 percent while the test only show the unexpected result at 0.1 percent of Tinosan Plus FG in the mixture. Therefore, the declaration is not commensurate with the scope of the claims.

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The Declaration 132 does not show the unexpected result over the claimed range. The component (k) in the claim does not have specific proportion compared to the proportion in the test result. Second, the test results only shows the unexpected result of the composition comprising the mixture of 0.1 percent of Tinosan plus FG and 0.3 percent of Tinosan HP 100 while the component (a) Tinosan plus FG is in the range of from 0.01 to 90 percent. According to MPEP, to establish unexpected results over the claimed range, applicants should a sufficient number of tests both inside and outside the claimed range (see *In re Hill*, 284 F. 2d 955, 128 USPQ 197). In this instant case, applicants should provide the test results both inside and outside the claimed range at both ended point to show the criticality of the claimed range in addition to individual test result of each antimicrobial agent.

Because the Declaration is not commensurate with the claim and does not show unexpected result, the rejections are deemed proper. All claims stand rejected.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THUY-AI N. NGUYEN whose telephone number is (571)270-3294. The examiner can normally be reached on Monday-Friday: 8:30 a.m. - 5:00 p.m. eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Milton I. Cano/
Supervisory Patent Examiner, Art Unit 1796

/THA/